***THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY**

WRIT PETITION No. 14037 OF 2007

% 24-07-2007

M/s.Telangana Spinning & Weaving Mills Ltd.,
Rep.by its Managing Director R.G.Patwari.

... Petitioner

Vs.

$ The District Registrar and Collector
Ranga Reddy District & others

… Respondents

! Counsel for the petitioner : Sri Ch.Ramesh Babu

^ Counsel for Respondents : G.P. for Revenue

<Gist :

>Head Note :

? Cases referred:

Nil

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 14037 OF 2007

Dated 24th July 2007

Between:

M/s.Telangana Spinning & Weaving Mills Ltd.,
Rep.by its Managing Director R.G.Patwari.

…Petitioner

and

The District Registrar and Collector
Ranga Reddy District & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 14037 OF 2007

O R D E R:

The petitioner is the owner of Acs.25-416 guntas in Survey Nos.147, 148 and 149 of Quthbullapur village and Mandal, Ranga Reddy District. It entered into a development agreement, with M/s.Dijaya Malind JV (Mauritius) Ltd., and a document dated 9.4.2007 was executed, in the form of a Development Agreement-cum-GPA. It was presented to the 2nd respondent, for registration. Claiming the benefit under G.O.Ms.No.1475, Revenue (Registration.I) Department, dated 30.7.2005, the petitioner paid a sum of Rs.50,000/- as stamp duty. The 2nd respondent entertained a doubt, as to the adequacy of stamp duty, and referred the matter to the 1st respondent. The latter, in turn, issued a notice to the petitioner, directing it to show-cause as to why a sum of Rs.63,53,750/- shall not be recovered towards deficit stamp duty. The petitioner submitted its explanation, mainly relying upon G.O.Ms.No.1475, dated 30.7.2005. Through proceedings dated 18.6.2007, the 1st respondent took the view that the petitioner is liable to pay a sum of Rs.63,53,750/-, as stamp duty, and a penalty of Rs.1,00,000/-. This writ petition is filed challenging the said proceedings.

The petitioner contends that the document squarely falls into Article-6(B) of Schedule-IA to the Indian Stamp Act, and in view of the specific orders contained in the G.O., there is no basis for the respondents, in issuing the impugned proceedings. It is also urged that there is no basis for levy of penalty.

On behalf of respondents, a counter affidavit is filed. The impugned proceedings are sought to be sustained on the strength of a D.O. letter, issued by the Commissioner and Inspector General of Registration & Stamps. It is not indicated as to how the G.O. is not applicable to the transaction in question. Nothing is stated about the justification for levying the penalty.

Heard the learned counsel for the petitioner and learned Government Pleader for Revenue.

It is not in dispute that the document presented by the petitioner is a Development Agreement-cum-GPA. Article-6(B) of Schedule I-A to the Indian Stamp Act reads as under:

Article No.		**Description of Instrument**	**Proper Stamp duty**
6.		Agreement or Memorandum of Agreement not otherwise provided for:	
	(A)	…	…

	(B)	If relating to construction of a house or building including a multi-unit house or building or unit of apartment/ flat/portion of multi-storied building or for development/sale of any other immovable property.	Five rupees for every one hundred rupees or part thereof on the market value or the estimated cost of proposed construction/ development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department Authorities which ever is higher.
	Note I: Stamp duty is reduced to 1% on the sale consideration or estimated cost of construction/development as declared by the parties subject to a maximum of Rs.20,000/- (w.e.f. 1.8.2005) in respect of Agreements or Memoranda of Agreements. ***Note II:*** Stamp duty is reduced to 1% on the sale consideration or estimated cost of Construction/Development as declared by the parties subject to a maximum of Rs.50,000/- which shall not adjustable in respect of documents relating to construction/development of immovable properties combined with G.P.A., w.e.f. 1.8.2005. (Vide G.O.Ms.No.1475 Revenue (Regn-I) Department, dated 30.7.2005)		

It is evident from a reading of this provision that a development agreement-cum-GPA is to be levied 1% of the cost of construction, subject to the maximum of Rs.50,000/-. The amount so paid is not liable to be adjusted towards the stamp duty, which is payable on the consequential sale deeds. The amount may appear to be relatively less, and not representing the correct value of the transaction. However, viewed from the fact that the amount of Rs.50,000/- is not refundable and is not liable to be adjusted in the sale deeds, that may be executed at a later point of time, the justification is very clear. It is not as if the document so registered would bring about any totality of

rights and obligations of the parties. Ultimately, the individual sale deeds are to be executed in relation to the property that is developed.

This vital aspect was totally ignored by the 1st respondent. An officer, who is supposed to be conversant with the latest provisions on the subject, has unfortunately treated himself bound by obsolete instructions issued by the Inspector General of Stamps, much prior to the issuance of the G.O. Even if any subsequent instructions are issued, by the Inspector General of Stamps, the 1st respondent is supposed to follow the orders issued by the Government.

Further, this court is shocked and surprised to note that the 1st respondent has gone to the extent of levying penalty of Rs.1,00,000/- upon the petitioner. It only discloses that he lacks the basic knowledge of the working of the Stamp Act and Rules made thereunder. The question of levy of penalty would arise, if only an insufficiently stamped document is presented before an Authority, as evidence, that too, after it is impounded. Another circumstance is where the document, which is already registered is found to have been inadequately stamped. In the instant case, the document was presented for registration, and if there was any deficit in the stamp duty, it ought to have been left to the petitioner to pay the balance. Any default would, at the most, result in denial of registration. By no stretch of imagination, it can be said that there is an occasion for levying penalty. This court, in fact, thought of imposing heavy costs upon the 1st respondent, for the ignorance he had exhibited in the matter. The learned Government Pleader, however, impressed upon this court that it be treated as first instance.

The writ petition is allowed, and the impugned order is set aside.

Since it is evident that the proper stamp duty has already been paid, the 2nd respondent shall admit the document to registration and release it, within a period of three days from the date of receipt of a copy of this order. There shall be no order as to costs.

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24th July 2007

Note: L.R. copies be marked.
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